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September 5, 2012

via electronic filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: **Internet-Protocol Caption Rendering and
CEA-708 Requirements
MB Docket Nos. 11-154 and 12-108**

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Association of Late Deafened Adults (ALDA), the Hearing Loss Association of America (HLAA), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) (collectively, "Consumer Groups"), and the Technology Access Project at Gallaudet University (TAP), write regarding the Media Bureau's Memorandum Opinion and Order dismissing one petition by the Digital Media Association (DiMA) for partial exemption or limited waiver of the Commission's Internet Protocol ("IP") closed captioning rules (the "Rendering Petition") and granting another (the "708 Petition").¹

VPD Compliance with IP Caption Rendering Requirements

We applaud the Bureau's decision to deny DiMA's request to waive the requirement of Section 79.4(c)(2)(i) of the Commission's rules for video programming distributors ("VPDs") to render closed captions for IP-delivered programming.² As the Bureau correctly noted, DiMA's "overly

¹ Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Petitions for Temporary Partial Exemption or Limited Waiver, Memorandum Opinion and Order, MB Docket No. 11-154 (Aug. 17, 2012) ("*DiMA Order*"), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0817/DA-12-1354A1.pdf.

² *Id.* at ¶ 16.

broad” request would have rendered the consensus deadlines for IP-captioning agreed upon by the consumer and industry representatives of the Video Programming Accessibility Advisory Committee (“VPAAC”) “entirely meaningless” and “would not [have] serve[d] the public interest.”³

We urge the Commission, however, to exercise diligence in ensuring industry compliance with the quickly-approaching rendering deadlines, including September 30, 2012 – less than a month away – for all prerecorded programming that is not edited for Internet distribution and March 30, 2013 for all live and near-live programming.⁴ Several industry representatives have assured us that VPDs and video programming owners (“VPOs”) are working diligently toward compliance with the rules, and we trust that they are doing so in good faith. We are concerned, however, about troubling indications of slow progress towards compliance, such as the recently-publicized failure of most major VPDs to provide captioning for IP-delivered video coverage of the Republican and Democratic National Conventions.⁵

As the Bureau noted, “VPDs have been aware of rendering requirements since Congress passed the [Twenty-First Century Communications and Video Accessibility Act (“CVAA”)] in October 2010” – a period of nearly two years.⁶ The Bureau could find no “special circumstances” that would warrant a delay in compliance with the rendering requirements – even for VPDs that have not provided closed captions before.⁷ The Bureau even conditioned its allowance of additional time for VPDs to comply with other CVAA requirements on the assumption that VPDs would fully comply with the rendering requirements.⁸ It is essential, then, that the Commission hold all VPDs to strict account for complying with the basic

³ *Id.* at ¶¶ 16-17.

⁴ 47 C.F.R. § 79.4(b)(1)-(2).

⁵ Steve Friess, *Networks, RNC overlook the deaf in online convention coverage*, POLITICO (Aug. 30, 2012), <http://www.politico.com/news/stories/0812/80460.html>.

⁶ *DiMA Order* at ¶ 16.

⁷ *See id.*

⁸ *See id.* at ¶¶ 10, 12 (“We emphasize . . . that VPDs will still by the initial deadlines be required to comply with the requirements that they ‘[e]nable the rendering or pass through of all required captions to the end user, maintaining the quality of the captions provided by the video programming owner and transmitting captions in a format reasonably designed to reach the end user in that quality.’”) (quoting 47 C.F.R. § 79.4(c)(2)(i)).

caption rendering requirements on *all platforms, applications, plug-ins, and devices* through which they offer consumers IP-delivered video content according to the well-established deadlines in Section 79.4(b).

The CVAA's goal of equal access to IP-delivered video content is of paramount importance to the more than 48 million Americans who are deaf and hard of hearing, and VPDs have been afforded a lengthy period of time to comply with the basic rendering requirement that lies at the heart of the Commission's IP captioning rules. **There is no excuse for anything less than full and timely VPD compliance with the Commission's rendering requirements.** Once the relevant deadlines go into effect beginning on September 30, we urge the Commission to take swift and decisive enforcement action against VPDs who fail to timely provide the functionality required by Section 79.4(c)(2)(i). We also encourage the Commission to release public notices reminding VPDs of their rendering obligations well in advance of the relevant deadlines.

VPD Compliance with CEA-708 Requirements

We are disappointed by the Bureau's decision to waive the CEA-708 requirements of Section 79.103(c) as they apply to VPDs until January 1, 2014.⁹ The Bureau's refusal to give sufficient weight to the interests of Americans who are deaf-blind or visually impaired¹⁰ is particularly concerning given that the Commission has recognized for more than a decade and recently reaffirmed that requirements like those embodied in Section 79.103(c) "can benefit a person with both a hearing disability and a visual disability in a way not possible with . . . analog captions."¹¹

⁹ *Id.* at ¶ 7.

¹⁰ *Id.* at ¶ 11 ("We also disagree with Consumer Groups' assertion that grant of the DiMA 708 Petition would "severely impact the public interest . . . by denying necessary user controls to viewers who are deaf-blind or visually impaired. . . . [W]e find that, on balance, it is preferable to provide additional time for compliance").

¹¹ Closed Captioning Requirements for Digital Television Receivers; Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility, ET Docket No. 99-254, MM Docket No. 95-176, 15 FCC Rcd. 16,788, 16,793, ¶ 11 (July 31, 2000), *quoted with approval* in Closed Captioning of Internet Protocol-Delivered Video Programming; Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-154, 27 FCC Rcd. 787, 851, ¶ 109 (Jan. 13, 2012) ("*IP Captioning Order*").

The Bureau's decision effectively rewards industry recalcitrance in addressing the obvious need for viewers to make simple changes to caption font, color, opacity, size, and background to make captions readable, and comes at the expense of Americans with both hearing and visual disabilities who were counting on the Bureau to act in accord with the Commission's long-standing precedent and Congress's obvious intent in enacting the CVAA. These Americans must now wait for another fifteen months to pass by during which they will be unable to access the important political, cultural, and economic opportunities of video programming on equal terms.

Nevertheless, the Bureau has now provided industry members with more than ample time to implement these important features. By January 1, 2014, VPDs will have had nearly two years since the Commission's order implementing the CVAA's IP captioning requirements was released¹² and nearly two and a half years since the industry and consumer representatives on the VPAAC agreed to recognize the importance of these features.¹³ The Bureau recognized "that the technological capabilities of Section 79.103(c) are desirable to viewers who are deaf or hard of hearing," and that it "did not wish to defer availability of these features any longer than necessary."¹⁴

In light of this substantially lengthened compliance period, **it is critical that the Commission not allow deadlines for compliance with CEA-708 features to slip any further.** Again, we urge the Commission to undertake strict enforcement of the rules beginning promptly on January 1, 2014. Moreover, we encourage the Commission and the Bureau to reject any attempts by VPDs or their trade associations to seek further delay of Section 79.103's requirements, including future petitions for waiver or exemption from the rules. And again, we urge the Commission to release public notices reminding VPDs of their CEA-708 obligations well in advance of the relevant deadlines to ensure that the lengthy time period afforded VPDs by the Bureau's decision is used to diligently make progress toward compliance.

¹² See *IP Captioning Order*, 27 FCC Rcd. at 852-853, ¶¶ 111-13.

¹³ First Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010 (July 13, 2011), 13-16, http://transition.fcc.gov/cgb/dro/VPAAC/First_VPAAC_Report_to_the_FCC_7-11-11_FINAL.pdf.

¹⁴ *DiMA Order* at ¶ 9 (citing extensive support for the proposition in various filings by Consumer Groups representatives).

Finally, we also wish to note for the record the intersection of the Bureau's decision in granting DiMA's 708 petition with the Bureau's ongoing proceeding to implement the user interface and video programming guide and menu requirements of Sections 204 and 205 of the CVAA.¹⁵ In particular, the VPAAC's Second Report noted that devices covered under Sections 204 and 205 must "provide a [Closed Captioning] Options function to support the capability for the user to modify the display of closed captioning data," including "the full range of technical capabilities listed under 47 C.F.R. [§] 79.103(c)."¹⁶ The VPAAC recommended "that industry be given not less than two years after publication of user interface regulations in the Federal Register to comply with the regulations."¹⁷ The Bureau notes that its rulemaking must be complete by October 9, 2013 to comply with the CVAA's requirements.¹⁸

We urge the Commission to reconsider the wisdom of the VPAAC's recommended two-year timeframe in light of the Bureau's decision to grant DiMA's 708 Petition. By the time the Bureau's user interface rulemaking is complete, VPDs and other device manufacturers should be substantially finished implementing the CEA-708 requirements of section 79.103(c) and the necessary user interfaces for viewers to access such functionality in order to meet the January 1, 2014 deadline for compliance.¹⁹

Because the implementation of CEA-708 functionality should be largely complete by the time the Commission will release user interface rules, it would be unnecessary and unwarranted for the Commission to afford

¹⁵ See generally Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: User Interfaces, and Video Programming Guides and Menus, MB Docket No. 12-108, 27 FCC Rcd. 4,191 (Apr. 24, 2012) ("*User Interface RFC*").

¹⁶ Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: User Interfaces, and Video Programming Guides and Menus, at 13 (Apr. 9, 2012), <http://vpaac.wikispaces.com/file/view/120409+VPAAC+User+Interfaces+and+Video+Programming+Guides+and+Menus+REPORT+AS+SUBMITTED+4-9-2012.pdf>.

¹⁷ *Id.* at 15

¹⁸ *User Interface RFC* at 4,192, ¶ 4.

¹⁹ See *DiMA Order* at ¶ 8 ("We expect that different VPDs will become able to comply with the technical capabilities of Section 79.103(c) at different times and, as the January 1, 2014 deadline approaches, we expect an increasing number of VPDs will make those technical capabilities available before they are required to do so.").

VPDs and other entities an additional two years to implement user interfaces already necessary for those entities to comply with section 79.103(c). At most, the Commission should grant entities an additional six months to make the minor adjustments necessary to comply with the specific standards that will be included in the Commission's user interface rules. And in no case should compliance with the Commission's user interface rules be recognized as an excuse for further delay in compliance with Section 79.103(c)'s requirements.

We also encourage the Bureau to solicit further information from VPDs and other industry members regarding their ongoing implementation of user interfaces to access the features required by Section 79.103(c). Many industry members should have made substantial progress toward implementing these features by the time the Bureau issues a Notice of Proposed Rulemaking, and prototypical interfaces for accessing CEA-708 features may help inform the portions of the Commission's user interface rules requiring interfaces for closed captioning options.

Please don't hesitate to contact me if you have any questions.

Respectfully submitted,

/s/

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